

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE KELLEY and KENNETH HANSEN,)	
)	No. C07-475 MJP
Plaintiffs,)	
)	MOTION TO SEAL
v.)	CONFIDENTIAL DOCUMENTS
)	
MICROSOFT CORPORATION, a Washington)	Note on Motion Calendar:
corporation,)	October 5, 2007
)	
Defendant.)	
)	

Microsoft Corporation respectfully requests that the Court enter an order sealing Exhibits A, B, C, D and F, to be filed by Plaintiffs in connection with their Reply in support of their Motion to Compel [Dkt. No. 36], as well as any documents filed by Plaintiffs that refer to those confidential exhibits. The factual background to this request is set forth in the Declaration of Stephen M. Rummage, filed contemporaneously with the filing of this Motion.

Such an Order falls well within the Court's discretion under Rule 26. The Court has "broad power" to enter protective orders, including orders sealing documents filed with the Court. *See Phillips ex. rel. Estate of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). Courts have exercised this power to seal a wide variety of documents, including documents that could create a competitive disadvantage if available to competitors. *See, e.g., Gelb v. American Telephone and Telegraph Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993).

MOTION TO SEAL CONFIDENTIAL DOCUMENTS
(C07-0475 MJP) — 1

SEA 2083110v1 0025936-000689

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1 Here, Plaintiffs have given Microsoft notice of their intent to file six confidential
 2 documents, generally described as follows: (1) an Operating System License Agreement,
 3 which contains a variety of provisions defining Microsoft's relationships with original
 4 equipment manufacturers ("OEMs"); (2) correspondence between Microsoft and one of its
 5 OEMs concerning pricing; (3) a draft of a Cooperative Market Development Agreement
 6 between Microsoft and its OEMs; (4) an OEM Marketing Bulletin containing marketing
 7 strategies shared confidentially between Microsoft and its OEMs; and (5) excerpts from a
 8 deposition that Microsoft designated as confidential pursuant to the parties' agreed Protective
 9 Order. *See* Rummage Dec., Ex. D (identifying documents and declaring intent to file).

10 Microsoft received notice of plaintiffs' intent to file these documents just four hours
 11 ago. Accordingly, it has not had an opportunity to develop a record sufficient to establish to
 12 this Court's satisfaction the confidential commercial nature of these materials. Microsoft
 13 believes that pursuant to CR 5(g) and the Court's order dated September 13, 2007, which
 14 directed the parties to follow CR 5(g)'s procedures, it was Plaintiffs' obligation to file this
 15 motion along with its papers, and it was Microsoft's obligation to "make the showing required
 16 by 5(g) in its response" to Plaintiffs' motion. *See* Order Denying Motion for Protective Order
 17 [Dkt. No. 42] at 1. Because Plaintiffs declined to file this motion, Microsoft is doing so.

18 Within the time allotted for a response to this Motion, i.e., on or before October 2,
 19 2007, Microsoft will file additional materials establishing the basis for its request to seal.

20 RESPECTFULLY SUBMITTED this 14th day of September, 2007.

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 22 Attorneys for Microsoft Corporation

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MOTION TO SEAL CONFIDENTIAL DOCUMENTS
(C07-0475 MJP) — 3

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I electronically filed the foregoing Motion to Seal Confidential Documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 14th day of September, 2007.

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